IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 792 OF 1997.

Railchild Sanstha Kalyan & Ors.. .... .. Petitioners

V/s

Bhimrao Raghunath & Ors..... ... ... .. Respondents.

Mr.A.Ahaege i/by R.S.Apte, Adv. For the petitioners.

Mr.A.P.Vanarse, AGP for respondent Nos.2 and 3.

**CORAM: A.P.DESHPANDE, J.**

22.2.2007.

**Oral Judgment:**

Heard learned counsel for the petitioners. None appears for respondent No.1. According to the petitioner the present respondent No.1 was appointed as Assistant Teacher by an order dated 23.12.1992 till the end of academic session. The said appointment according to the petitioner was in leave vacancy. At the end of academic session 1992-93 he was terminated and was issued fresh order of appointment in the academic sessions 1993-94. At the end of said academic sessions again respondent No.1 came to be appointed for academic session 1994-95. From the end of the said academic

session respondent No.1 came to be terminated and aggrieved thereby he filed appeal before the Presiding Officer, School Tribunal Nashik. The Tribunal has allowed the appeal and granted relief of reinstatement with back wages. The Tribunal has held that though the order of appointment refers to the appointment as temporary the same is no doubt an appointment on probation. Respondent No.1 belongs to schedule caste category of backward class and hence the Tribunal has also held that he is entitled to benefit of Rule 9 sub-rule 9 (a) of the Rules.

2. The learned counsel for the petitioner has placed on record copy of affidavit dated 28.11.06 wherein it is stated that the respondent No.1 is gainfully employed since his termination. It is stated in the affidavit that respondent No.1 came to be appointed as Assistant Teacher with effect from 19.6.95 in Nalanda Prathamik Vidyalaya, Kalyan and he is now a permanent employee. It is also stated that since 1995 till date respondent No.1 is in continuous service of the said institution. To substantiate the said statement of fact, a communication received by the petitioner from the Head Master of Nalanda Prathamik Vidyalaya is placed on record wherein it is stated that respondent No.1 is in continuous service in the said school from 19.6.95 till date of the letter i.e. 15.11.2006. The learned counsel for the petitioner submits that respondent No.1 came to be appointed in

Nalanda Prathamik Vidyalaya even before he filed the appeal before the School Tribunal and hence a similar affidavit was filed on record of the School Tribunal but the Tribunal has not considered the same. It is further pointed out that respondent No.1 is not interested in opposing the present writ petition. The learned counsel has also invited my attention to the order passed by this Court while granting Rule dated 18.6.1997 whereby this Court only granted stay to the payment of back wages and did not grant stay to the order of reinstatement. Learned counsel for the petitioner then makes a statement that respondent No.1 never approached the petitioner with a view to join duties though there was no stay granted to the reinstatement. In the submission of the learned counsel respondent No.1 did not join the services despite order dated 18.6.1997 as he was appointed in a permanent vacancy in Nalanda Prathamik Vidyalaya. It does appear that respondent No.1 is not interested in opposing this writ petition as he is permanently employed as assistant teacher in Nalanda Prathamik Vidyalaya. No reply affidavit has been filed in this writ petition nor any body represents respondent No.1. Relying on the affidavit filed by the advocate for the petitioner and the communication from the Head Master of Nalanda Prathamik Vidyalaya dated 15.6.2006 I proceed to allow this writ petition. In the result writ petition is allowed. Impugned order passed by the Tribunal is quashed and set aside. Rule made

absolute in above terms. Affidavit together with the communication dated 15.6.2006 is taken on record and marked `X' for identification.